

MEMORANDUM OF UNDERSTANDING

Utah Department of Transportation and Federal Highway Administration

Contract and Modification Requests Consultant Selection Limits and Caps

September 9, 2003

The Utah Department of Transportation (UDOT) and Federal Highway Administration (FHWA) are by this Memorandum agreeing to the following process for handling any new proposed contracts, and modifications to contracts, for engineering services through the General Engineering Services and Local Government Pool of Consultants (Pool) and Streamlined Requests for Qualifications. This Memorandum of Agreement will reflect all future Caps and Limits as determined for each Pool Request for Qualifications.

Definition of Caps and Limits

There are three limits or caps to consider when selecting a consultant for a project. These caps/limits will be defined here and referred to throughout this Memorandum.

1) Pool Contract-Limit

When selecting a consultant through the Pool, the limit for any contract, including any modifications, is **\$250,000** for both State/Federal and Local Government projects.

2) Pool Consultant-Cap

Each consultant that is selected as qualified for engineering services work and is placed on the list of pool consultants has a cumulative cap to the amount of work they may be selected for during the two-year period of the Pool.

For Pool periods **prior to July 1, 2003**: The consultant-cap is **\$600,000** for State/Federal Pool projects.

For Pool period **July 1, 2003 through June 30, 2005**: The consultant-caps are **\$750,000** for State/Federal Pool projects and **\$600,000** for Local Government Pool projects.

3) Streamlined Request for Qualifications Cap (Streamlined RFQ-Cap)

The range when a consultant is selected through the Streamlined Request for Qualifications process, is **\$0 to \$500,000** for the contract. The \$500,000 is a cap for the contract and any potential modifications to the contract.

Standard Request for Qualifications

A consultant selected through a Standard Request for Qualifications process does not have a dollar cap, the range is **\$0 to unlimited** within the fully disclosed Scope of RFQ.

Engineer of Record for Local Government

A consultant selected through an Engineer of Record process does not have a dollar cap, the range is **\$0 to unlimited** within the fully disclosed Scope of RFQ. However, a consultant's qualifications for the particular project shall be reviewed to confirm expertise for that type of work - refer to Chapter 6 of Consultant Services Manual of Instructions. The Local Government Agency has the right to restrict Scope, Schedule and Budget of each project RFQ.

Background and Goal for the Future

The goal for the future of consultant selection through the Pool is to encourage the UDOT and Local Governments to use a more competitive process in selecting consultants.

If there is possibility the contract will exceed the caps/limits, the requirement is to proceed with a Streamlined or Standard Request for Qualifications (RFQ) at the earliest possible stage when it is recognized the caps/limits will be an issue, instead of having to consider an exception to the limit at a later point in the project.

The Streamlined RFQ was developed as a simple (no approach) version of the Standard RFQ that could fill the need for a quick simple selection of a consultant that would still be more competitive than a Pool selection – refer to Chapter 4 Change #1 of Consultant Services Manual of Instructions.

New Contract Requests

In an effort to be more proactive, as the need to hire a consultant for engineering services projects is realized, UDOT Project Managers, UDOT Consultant Services, and Local Governments will analyze new project requests to determine the best method of consultant selection for the project.

Pool Contract Request

When considering whether the easiest method of consultant selection, Pool selection, would be best, we must consider whether the original contract and any possible modifications has a reasonable potential to exceed the Pool contract-limit. If this potential exists, a Pool consultant selection is not recommended. UDOT and Local Government Project Managers should proceed with a Streamlined or Standard RFQ. As a guideline for determining whether a project will exceed the Pool contract-limit, if an Independent Cost Estimate exceeds **\$200,000**, a Streamlined or Standard RFQ is recommended.

Streamlined Request for Qualifications (Streamlined RFQ) Contract Request

If the project has the reasonable potential to exceed the Streamlined RFQ-cap, the only alternative for consultant selection is a Standard RFQ. As a guideline for determining whether a project will exceed the Streamlined RFQ-cap, if an Independent Cost Estimate exceeds **\$450,000**, a Standard RFQ is recommended.

Environmental Projects

If the project is for the preparation of an Environmental Assessment or an Environmental Impact Statement, it is highly recommended UDOT and Local Government Project Managers should proceed with a Standard RFQ rather than selecting a consultant from the Pool or utilizing a Streamlined RFQ. The reason for this is the nature of environmental projects. Environmental projects must have the latitude to develop or expand based on information discovered during the environmental process and should not be limited by arbitrary constraints, at no time should the environmental contract and/or modifications allow the project to be fully designed unless stated otherwise in the RFQ.

Exceptions Approval Process

Contract/Modification Requests for Pool or Streamlined RFQ's Contracts Exceeding Caps/Limits or Modification Requests for Consultants that did not qualify from the Previous Pool Period to the Current Pool Period

The goal for each contract, including modifications, is not to exceed any of the caps or limits set for the consultant selection. Requests for initiation of a contract or modification that would exceed a limit, cap or allow for a consultant to be selected who did not make the new Pool will not be reviewed for approval unless **all** of the following exception conditions are met.

- A. UDOT/Local Government (if applicable) Project Manager **assures** in writing to Engineer of Engineering Services there will be no further modifications that would expand scope and/or cost.
- B. UDOT/Local Government (if applicable) Project Manager **assures** in writing to Engineer of Engineering Services the modification request is not due to Consultant **negligence** or inability to **administer** the terms of the original contract.
- C. UDOT/Local Government (if applicable) Project Manager **assures** in writing to Engineer of Engineering Services the purpose and effect of the modification scope is not to accommodate **minor work** or contract **overruns** not originally identified in the initial scope.
- D. UDOT/Local Government (if applicable) Project Manager **justifies** in writing to Engineer of Engineering Services the **necessity** to complete the project with the current consultant and **why** there is not a good **breaking point** to select a different consultant or to go out for a Streamlined or Standard RFQ.

If the UDOT/Local Government (if applicable) Project Manager believes a modification request for a State or Federally funded project meets all of these exception conditions, the Project Manager will **seek** the Engineer of Engineering Services written approval for an exception to the rules by completing the "Consultant Selection Caps/Limits Exception Approval Form" (Form) on Page 7 of this Memorandum of Understanding.

The Engineer for Engineering Services will review exception requests. If granted, the Engineer for Engineering Services will sign the Form and return it to the UDOT/Local Government (if applicable) Project Manager and the Project Manager may then move forward with contacting Consultant Services (Request Memo – Accountant) and contacting the consultant for

appropriate modification document preparation to begin. If not granted, the Engineer for Engineering Services will notify the UDOT/Local Government (if applicable) Project Manager in writing.

Note: The signed Form must accompany the UDOT Project Manager's Modification Packet to Consultant Services, it will be part of the actual Contract and/or Modification when prepared.

Approval of Exceptions to Pool or Streamlined RFQ Consultant Selection Caps/Limits for Modification Requests

If an exception to the Pool or Streamlined RFQ caps/limits is granted, all that has been approved is the selection of the consultant to perform the work and proceed with the preparation of the modification. The actual modification will still need to be approved by the appropriate FHWA, UDOT, Local Government, and Consultant authorities. All contract and modification **Notice to Proceed authorization must come from Consultant Services in writing.** Any violation of this rule may result in loss of project funding and non-payment to the consultant.

Tracking Dollars of Contract/Modification Requests

Modification Requests for Contracts Initiated During Pool Periods that Predate July 1, 2001

If a modification request exceeds the **Pool contract-limit and/or the consultant-cap** for a contract that was initiated during a Pool period that is **prior to July 1, 2001**, the consultant selection for the modification request will need to be approved through the Exceptions Approval Process.

If approved through the Exceptions Approval Process, the amount of the modification will be tracked **only** in the Contract Management System (**CMS**) in the Pool the original contract was initiated in.

Modification Requests for Contracts Initiated During the July 1, 2001 to June 30, 2003 Pool, and the July 1, 2003 to June 30, 2005 Pool

If a modification request exceeds the **Pool contract-limit and/or consultant-cap** for a contract that was initiated during the **2001-2003 Pool Period or 2003-2005 Pool Period**, the consultant selection for the modification request must follow the Exceptions Approval Process.

If approved through the Exceptions Approval Process, the amount of the modification will be tracked in two places: **1)** Contract Management System (**CMS**) in the Pool the original contract was initiated in, **and 2)** Excel Spreadsheet for appropriate the Pool Period only until our CMS system is able to produce adequate reports which reflect contract information of importance to UDOT and FHWA. This time frame will not exceed June 30, 2005.

New Fiscal-Year-Based Pool Process for Consultant-Caps/Limits Starting July 1, 2005

Closure of Old Pool Consultant Dollars

As of **July 1, 2005** all old Pools **will be closed for consultant-caps**. Modification requests will no longer be assessed against previous Pool consultant-caps. Therefore, all new Contracts will **only** be tracked in the Contract Management System (CMS).

New Fiscal-Year-Based Pool Process

Beginning July 1, 2005 a new process based on the Execution or Notice-to-Proceed date for administering the consultant-caps will start.

All new contracts and **all** modification requests for existing contracts, will be assessed against the consultant-cap for the current Pool.

Example - Any contract or modification with an execution date between **July 1, 2005 and June 30, 2007** will be assessed against the **Fiscal-Year 06-07 Pool Period**.

Example - Any contract or modification with an execution date between **July 1, 2007 and June 30, 2009** will be assessed against the **Fiscal-Year 08-09 Pool Period**, etc.

Once this new process is implemented, the tracking of consultant-caps will be easily tracked within the Contract Management System (CMS) by **Fiscal-Year** by using the execution/Notice-to-Proceed Date.

Exceptions to Pool or Streamlined RFQ Caps/Limits after July 1, 2005

Any requests for modifications that **exceed** the cap/limits for the Pool or Streamlined RFQ **must** comply with the Exceptions Approval Process.

If an exception is not approved and the work cannot be done by appropriate UDOT personnel, the UDOT Project Manager may either select another consultant from the current Pool or go out for a Standard or Streamlined RFQ depending on the needs of the project. Both of these options would require a **new** contract.

Approval of Memorandum of Understanding

Utah Department of Transportation

Stan Burns
Director of Engineering Services

Date

Charles Larsen, CPA
Comptroller

Date

Federal Highway Administration

Frank F. Long
Utah Division Financial Manager

Date

CC: Stan Burns, Engineering Services
Marie Walton, Consultant Services
Cherise Young, Comptroller's Office
Kathy Starks, Program Development
UDOT Project Managers/Region Directors/Technicians

Consultant Selection Caps/Limits Exceptions Approval Process Request Form

Request Date:
Pin No.:
Project No.:
Contract No.:
Modification No.:
Consultant:
Local Government Agency:
Violation Description:

UDOT Project Manager, please submit this completed Form to the Engineer for Engineering Services for review. Use and attach to the Form as many pages as necessary to explain **in writing** why an exception to the consultant selection cap or limit is necessary regarding the above information. Keep in mind the following requirements.

- A. **Assure** there will be no further modifications that would expand scope and/or cost.
- B. **Assure** the modification request is not due to Consultant **negligence** or inability to **administer** the terms of the original contract.
- C. **Assure** the purpose and effect of the modification scope is not to accommodate **minor work** or contract **overruns** not originally identified in the initial scope.
- D. **Justify** the **necessity** to complete the project with the current consultant and **why** there is not a good **breaking point** to select a different consultant or to go out for a Streamlined or Standard RFQ.

The Engineer for Engineering Services will review all exception requests. If granted, the Engineer for Engineering Services will sign the Form and return it to the UDOT/Local Government (if applicable) Project Manager and the Project Manager may then move forward with contacting Consultant Services (Request Memo – Accountant) and contacting the consultant for appropriate modification document preparation to begin. If not granted, the Engineer for Engineering Services will notify the UDOT/Local Government (if applicable) Project Manager in writing.

Note: The signed Form must accompany the UDOT Project Manager's Modification Packet to Consultant Services, it will be part of the actual Contract and/or Modification when prepared.

Utah Department of Transportation

UDOT Project Manager / Region
Insert email address

Date

Engineer for Engineering Services
Insert email address

Date